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EXAMINER

CHAKRABORTY, RAJARSHI

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte NARENDRA ANAND, SUNG-JU LEE,
and EDWARD KNIGHTLY

Appeal 2016-005297
Application 13/440,793
Technology Center 2600

Before BRUCE R. WINSOR, KARA L. SZPONDOWSKI, and
AARON W. MOORE, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants¹ appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1 and 3–20, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

THE INVENTION

The application is directed to “[a] system [that] enhances communications security in a wireless local area network.” (Abstract.)

Claim 1, reproduced below, is exemplary:

1. A system for enhancing communications security in a wireless network, comprising:

a multiple antenna array arranged to transmit signals;

a transmitter coupled to the multiple antenna array and configured with a beamformer to transmit the signals, the beamformer comprising:

a signal processor component that generates a transmit signal to an intended user using a spatial signal beam, a blinding component that computes one or more blinding signals using spatial blinding beams having a zero inter-user interference condition with the spatial signal beam, and

a beamforming component that generates the signal and blinding beams, wherein the transmitter transmits the signal beam and the blinding beams simultaneously, wherein the spatial signal beam and the spatial blinding beams are generated using channel information for only the intended user.

¹ Appellants identify Hewlett-Packard Development Company, LP as the real party in interest. (*See* App. Br. 3.)

THE REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Kim et al.	US 2010/0046659 A1	Feb. 25, 2010
Hui et al.	US 2010/0279729 A1	Nov. 4, 2010
Shany et al.	US 2012/0214404 A1	Aug. 23, 2012

THE REJECTIONS

1. Claims 1, 5, 6, 7, 8, 9, 12, 14, 15, 16, 19, and 20 stand rejected under 35 U.S.C. § 102(e) as anticipated by Shany. (*See* Final Act. 5–13.)
2. Claims 4, 10, 11, 13, 17, and 18 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Shany and Hui. (*See* Final Act. 14–21.)
3. Claim 3 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Shany, Hui, and Kim. (*See* Final Act. 22–23.)

ANALYSIS

Each of the rejections is based on Shany, either alone or in combination with Hui or with Hui and Kim. Appellants do not seek to distinguish the claimed invention over these references. Instead, they argue only that the rejections are improper because Shany is not prior art, relying on a “Declaration Under 37 C.F.R. § 1.131 Accompanying A Request For Continued Examination (RCE)” (the “Declaration”) signed by each of the inventors and submitted in an effort to swear behind Shany. The Examiner found the Declaration inadequate, and Appellants now seek our review of that determination.

In the Declaration, the inventors aver, under oath, that

[W]e established prior invention of the claimed subject matter due to an actual reduction to practice of our invention on a date no later than February 17, 2011, which predates the earliest effective filing date of Shany. An actual reduction to practice of our invention is evidenced by the construction of tangible code files that are implemented to perform every element of the independent claims, and thus, operate for their intended purpose as shown in the attached Exhibits A-D.

(Declaration ¶ 5.) Exhibit A is a screenshot of a computer file directory showing a list of files. The Declaration identifies three of the files and states that each was created on February 13, 2011 or February 14, 2011 and last modified on February 14, 2011 or February 17, 2011. (*Id.* ¶ 5(a).²) The Declaration generally describes the content of each of the three files and identifies Exhibits B–D as the code in each of the files. (*Id.* ¶ 5(c)–5(e).³) Exhibits B–D are annotated to map the code to the limitations of the independent claims. (*Id.* ¶ 5(f).) The Declaration further states that the inventors “continuously tested and implemented the code files . . . between February 13, 2011 and February 17, 2011 to ensure that the code files operated for [their] intended purpose of enhancing communications security in a wireless network.” (*Id.* ¶ 5(g).)

In the absence of a statutory bar, 37 C.F.R. § 1.131 provides that an applicant may establish invention of the claimed subject matter before the effective date of a reference. The requisite showing of facts to establish prior invention is stated in § 1.131(b):

² The dates on the file copy of Exhibit A are not legible, but are identified in the text of the Declaration.

³ The Declaration has no paragraph 5(b).

The showing of facts for an oath or declaration . . . shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application.

The applicant is obligated to give a clear explanation of the exhibits pointing out exactly “what facts or data appellants are relying upon to show a completion of their invention.” *In re Borkowski*, 505 F.2d 713, 718–19 (CCPA 1974). We have broad discretion as to the weight to be given the evidence. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1368 (Fed. Cir. 2004).

“An invention is reduced to practice when the patentee has an embodiment that meets every limitation and operates for its intended purpose.” *Honeywell Int’l Inc. v. Universal Avionics Sys. Corp.*, 488 F.3d 982, 997 (Fed. Cir. 2007); *see Taskett v. Dentlinger*, 344 F.3d 1337, 1340 (Fed. Cir. 2003) (“In order to establish an actual reduction to practice, the inventor must prove that: (1) he constructed an embodiment or performed a process that met all the limitations of the [claim]; and (2) he determined that the invention would work for its intended purpose.” (quoting *Cooper v. Goldfarb*, 154 F.3d 1321, 1327 (Fed. Cir. 1998).)

We find Appellants’ Declaration insufficient to establish a reduction to practice because it is devoid of any showing that the subject work included a “multiple antenna array” or a “transmitter,” as recited in claims 1 and 15, or that it “transmitted” both “a signal beam” and a “blinding beam,” as recited in claim 8. Although the Declaration avers that the inventors “continuously tested and implemented the *code files* . . . between February 13, 2011 and February 17, 2011 to ensure that the *code files* operated for

[their] intended purpose of enhancing communications security in a wireless network” (Declaration 4, emphasis added), there is no allegation or other evidence that the code was tested and worked in conjunction with an actual “multiple antenna array” and an actual “transmitter,” or so as to actually generate or transmit “a signal beam” or a “blinding beam.”⁴ As the claims require that hardware and real world activity, it is not sufficient that the software was deemed to be in a state that would have resulted an operable embodiment of the claimed invention were it mated with the hardware—an Applicant seeking to establish an actual reduction to practice is required to show “an embodiment that meets *every* limitation.” *Honeywell*, 488 F.3d at 997 (emphasis added). For this reason, we agree with the Examiner that the Declaration is insufficient to establish a reduction to practice prior to Shany’s earliest effective filing date.⁵

We accordingly sustain the rejections of claims 1 and 3–20.

⁴ The assertion that the inventors “established prior invention . . . due to an actual reduction to practice . . . on a date no later than February 17, 2011” (Declaration ¶ 5) is merely conclusory. We discern no improper intent in this inaccurate averment but also observe that ultimate conclusions are unhelpful in such a declaration, as “conception and reduction to practice are questions of law.” *Singh v. Brake*, 317 F.3d 1334, 1340 (Fed. Cir. 2003).

⁵ In addition, although not necessary to our decision, we note that a “37 CFR [§] 1.131 affidavit or declaration must contain an allegation that the acts relied upon to establish the date prior to the reference or activity were carried out in this country or in a NAFTA country or WTO member country.” MPEP § 715.07(c); *see* pre-AIA 35 U.S.C. § 104. Appellants’ Declaration and exhibits do not allege or otherwise establish that any relevant acts were carried out in this country or in a NAFTA country or WTO member country.

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DECISION

The rejections of claims 1 and 3–20 are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED